

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH MARSHALL,

Plaintiff-Appellant,

v

JAMES R. CMERJREK,

Defendant-Appellee.

UNPUBLISHED

May 8, 1998

No. 197966

Washtenaw Circuit Court

LC No. 94-001794 NM

Before: Gribbs, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiff appeals the circuit court opinion and order granting defendant's motion for summary disposition in this legal malpractice action. We affirm.

First, the trial court did not err in granting summary disposition as to plaintiff's allegation of legal malpractice regarding the distribution of the assets of Dr. Dimcheff's professional corporation. It is evident from the record that the trial court considered the provisions for alimony and property division together, as defendant properly argued it should. Compare *Kurz v Kurz*, 422 Mich 882; 367 NW2d 70 (1985). Here, where it appears that plaintiff was awarded alimony in lieu of a share of Dr. Dimcheff's professional corporation, summary disposition was proper as to plaintiff's claim that defendant conceded the issue of valuation of the corporation. Defendant was also entitled to summary disposition as to plaintiff's claim that he committed malpractice for failing to appeal the trial court's failure to assign a value to the professional corporation. Defendant had no professional duty to file an appeal. *State Bar of Michigan v Corace*, 390 Mich 419, 432; 213 NW2d 124 (1973). Finally, defendant was entitled to summary disposition as to plaintiff's claim that he should have investigated the use of funds that Dr. Dimcheff removed from his pension plan. The trial court was aware that Dr. Dimcheff removed \$40,000 from the fund; it was irrelevant whether Dr. Dimcheff used those funds to purchase a share in the professional corporation or for some other purpose.

Nor did the trial court err in granting summary disposition as to plaintiff's allegation of legal malpractice regarding the distribution of the assets of Dr. Dimcheff's pension fund. The trial court did not abuse its discretion in concluding that there were plausible reasons to use the date of

the complaint as the valuation date for Dr. Dimcheff's pension. *Thompson v Thompson*, 189 Mich App 197, 199-200; 472 NW2d 51 (1991); *McMichael v McMichael*, 217 Mich App 723, 731; 552 NW2d 688 (1996). Further, as noted previously, defendant had no duty to appeal the trial court's rulings as to either the pension valuation date or the pre-marriage assets. *Corace, supra*. Plaintiff's claim that the trial court's ruling would have been different if defendant had apprised the court of "critical information" is speculative.

Finally, the trial court did not err in granting summary disposition as to plaintiff's allegation of legal malpractice regarding the distribution of the assets of the limited partnership interests. Defendant was replaced by other counsel several months before November 8, 1993, when the trial court ruled adversely to plaintiff regarding the valuation and disposition of the limited partnership assets. We find plaintiff's reliance on *Teodoresu v BGR&B (On Remand)*, 201 Mich App 260; 506 NW2d 275 (1993), misplaced. Unlike this case, the defendant law firm's negligence in *Teodoresu* began to harm plaintiff before the cessation of the attorney-client relationship. Defendant cannot be held liable here for failing to attain the appropriate valuation on the limited partnership assets when he was replaced by other counsel while plaintiff held an equal interest in the limited partnerships and before the trial court ruled on the then-pending motion challenging the valuation and disposition of those assets. *Boyle v Odette*, 168 Mich App 737; 425 NW2d 472 (1988).

Affirmed.

/s/ Roman S. Gribbs
/s/ Mark J. Cavanagh
/s/ Henry William Saad